IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-04-2005

CORAM:

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM
AND
THE HONOURABLE MR.JUSTICE C.NAGAPPAN

Writ Petition No.32457 of 2004
and
W.P.M.P.No.39320 of 2004

N.Veerasamy .. Petitioner
Treasurer
Dravida Munnetra Kazhagam (DMK)
A 39, Anna Nagar, Chennai 102.

Vs.

1. Union of India,
   rep. by Secretary to Govt.,
   Ministry of Home Affairs,
   Government of India,
   North Block,
   New Delhi.

2. Secretary to Government,
   Ministry of Personnel Affairs,
   Administrative Reforms and
   Public Grievances,
   Government of India,
   New Delhi.

3. State of Tamil Nadu,
   rep. by Chief Secretary to Govt.,
   Fort St. George,
   Chennai-600 009.

4. State of Tamil Nadu,
   rep. by Secretary to Govt.,
   Public Department,
   Fort St. George,
   Chennai-600 009.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. Ms. Lakshmi Pranesh,
Chief Secretary to
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, as stated thereunder.

For Petitioner : Mr.R.Viduthalai, S.C. for M/s.A.V.Bharathi

For Respondents 1 & 2 : Mr.V.T.Gopalan, Addl.Solicitor General for Mr.J.Ravindran, ACGSC.

For Respondents 3 & 4: Mr.P.P.Rao, Senior Advocate Assisted by Mr.A.L.Somayaji Addl. Advocate General for Mr.K.Mahendran, Spl.G.P.

ORDER

M.KARPAGAVINAYAGAM, J.

N.Veerasamy, the Treasurer of the political party Dravida Munnetra Kazhagam (DMK), has filed this Pro bono Publico seeking for a Writ of Mandamus directing the Central Government, the respondents 1 and 2 and the State Government, the respondents 3 and 4 to take action against Mrs.Lakshmi Pranesh, the fifth respondent herein under the All India Services (Discipline and Appeal) Rules 1969 for having violated the provisions of Rules 3,7 and 9 of the All India Services (Conduct) Rules 1968.

2. According to the petitioner, he has been a Member of the Tamil Nadu Legislative Assembly for the past 28 years. He was a former State Cabinet Minister for two periods and has got a political career spanning over 3 decades by dedicating himself to the welfare and well being of the people of Tamil Nadu.

3. The Central Government was formed in May 2004 by Democratic Progressive Alliance led by Indian National Congress. On the assumption of power, the new Government took a decision to review the appointment of Governors made by the previous Government.

4. Opposing the move to transfer of the Governor of Tamil Nadu Mr.Ram Mohan Rao, the State of Tamil Nadu filed a suit in the Supreme Court under Article 131 of the Constitution of India in O.S.No.5 of 2004 praying for declaration that the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

President/Union of India cannot transfer a Governor of the State except with the previous consent of the Chief Minister heading the Council of Ministers of the concerned State Government in which the said Governor is holding the office. The said suit was filed through Mrs.Lakshmi Pranesh, the Chief Secretary to Government of Tamil Nadu.

5. In paragraph Nos.22 to 24 of the plaint, serious and baseless allegations were made with a view of damage the reputation of the President of D.M.K. party Dr.Kalaignar M.Karunanidhi. By making such false allegations, Mrs.Lakshmi Pranesh, I.A.S., the fifth respondent herein has violated the rules 3,7 and 9 of the All India Services (Conduct) Rules 1968. This is a conduct unbecoming of a member of All India Service.

6. The petitioner being the Treasurer of the party approached the Home Minister of India in New Delhi and pleaded for appropriate action against the fifth respondent who made false and baseless allegations against his leader, viz., Dr.Kalaignar M.Karunanidhi. As he advised the petitioner to seek legal redressal, the petitioner has filed this writ petition praying for a Writ of Mandamus directing the respondents 1 to 4 to take appropriate disciplinary action under the All India Services (Discipline and Appeal) Rules, 1969.

7. Mr.R.Viduthalai, the learned senior counsel, while elaborating the various points raised in the affidavit sworn to by the petitioner, would strenuously contend that as per Rule 7 of the All India Services (Conduct) Rules, 1968, there is a prohibition for the member of All India Service that he/she should not make any adverse criticism against the leaders of the political party by siding one Government, thereby embarrassing the inter se relationship between the Central Government and the State Government and despite the restriction imposed on the member of All India Service cadre by Rules 3,7 and 9, the fifth respondent has embolden to make false and personal allegations against the Leader of the D.M.K. Party who is the former Chief Minister and as such, there is a clear breach of the aforesaid Rules for which, the fifth respondent is liable for disciplinary action as per the provisions of All India Service (Discipline and Appeal) Rules, 1969.

WEB COPY

8. On the strength of the decisions rendered by the Supreme Court in 2003(7) S.C.C.546 (GURUVAYOOR DEVASWOM MANAGING COMMITTEE v. C.K.RAJAN) and 2003(6) S.C.C.581 (T.K.RANGARAJAN v. GOVT. OF T.N.), he would vehemently contend that the petitioner is entitled to approach this Court through public interest litigation in view of the extraordinary circumstances where the Chief Secretary has stooped to the level of making the

https://hcservices.ecourts.gov.in/hcservices/

allegations against a senior politician, the former Chief Minister Dr.Kalaignar M.Karunanidhi. He would point out paragraph 50 of Guruvayoor Devaswom's case referring to the guidelines 2 and 8 and submit that the Supreme Court would hold that in an appropriate case, the petitioner can approach the Court under Article 226 of the Constitution even in his private interest and for redressal of personal grievances and in respect of the issues of the public importance, the Court can entertain the said petition in furtherance of the public interest. As such, the direction in the form of Writ of Mandamus,, though it is extraordinary, is maintainable as the extraordinary circumstances have been created by the fifth respondent, who made false and frivolous allegations against the former Chief Minister in the plaint filed before the Supreme Court which is liable to be dealt with by the Government through disciplinary action as per the required provisions.

9. Arguing contra, Mr.P.P.Rao, the learned senior counsel appearing for the State Government, the respondents 3 and 4, would vehemently oppose the contention urged by Mr.R.Viduthalai, the learned senior counsel appearing for the petitioner, by pointing out on the strength of the counter filed on behalf of the State Government that public interest litigation is not at all maintainable in view of the decision in 2000(9) S.C.C.313 (RAJNIT PRASAD v. UNION OF INDIA) and that the approach of the petitioner before this Court even without approaching the State Government for appropriate action which can be taken only by the State Government, that too the alleged false allegations made in the plaint filed before the Supreme Court under Article 131, is sub judice and as such, the petition is liable to be dismissed as an abuse of process of court.

10. Mr.V.T.Gopalan, the learned Additional Solicitor General, appearing for the Central Government, the respondents 1 and 2, is also heard.

11. We have heard the counsel for the parties and perused the records. We have given our anxious considerations to the contentions urged on either side.

WEB COPY

12. Firstly, it shall be stated that the act of the petitioner in approaching this Court under Article 226 of the Constitution praying this Court to hold that the averments contained in paragraphs 22 to 24 of the plaint filed before the Supreme Court are false and seeking for consequential direction to the authorities to take action, is highly improper. When the matter is sub judice in Supreme Court with reference to the statements mentioned in the plaint, even to ask this Court to initiate a parallel collateral litigation against the Chief

https://hcservices.ecourts.gov.in/hcservices/

Secretary, the fifth respondent, who verified the plaint in the discharge of official duty, by filing writ petition, in our view, would amount to interference with the course of justice not only in this Court but also in the Supreme Court.

13. We are at a loss to understand as to how this Court could be asked to give finding with reference to the statements made in the plaint filed before the Supreme Court so as to affect the fair trial of the suit pending in the Supreme Court, wherein the averments made in the plaint could be proved by evidence, oral and documentary.

14. It is highly unfortunate on the part of the petitioner to request this Court to usurp the power of the Supreme Court to give a finding with reference to the statements which are to be proved before the Supreme Court and to hold that those averments are false even without allowing the Supreme Court to go into those allegations on the basis of the materials to be placed by the State Government before the Supreme Court.

15. Therefore, the prayer of this nature when the matter is sub judice in Supreme Court, is not only not maintainable either in law or on facts, but also would amount to abuse of process of court.

16. Secondly, the petitioner himself would admit in paragraph 10 of his affidavit that the State Government alone is the appropriate disciplinary authority to initiate disciplinary proceedings against the Chief Secretary, the fifth respondent herein. The following is the statement made by the petitioner in paragraph 10:

> "I state that though appropriate disciplinary proceedings have to be initiated by the State Government, the State Government had not initiated any disciplinary action."

WEB COPY

Despite this admission, there is no reason as to why the petitioner has not chosen to approach the State Government to intimate the State Government about the alleged violation of the rules and to request for the required action. Having known about the competence of the State Government which alone could initiate action against the Chief Secretary, there is no reason for the petitioner to meet the Home Minister of India and to plead for appropriate action against the fifth respondent.

https://hcservices.ecourts.gov.in/hcservices/

17. It is stated in paragraph 10 of the affidavit that the petitioner has approached this Court since he was advised by the Home Minister to seek legal redressal through the court. In spite of the advice of the Home Minister of India to approach for legal redressal, there is no reason for the petitioner to approach this Court instead of the Supreme Court with regard to the said redressal having fully known that the matter is pending before the Supreme Court. So, this is also improper.

18. Thirdly, as correctly pointed out by Mr.P.P.Rao, the learned senior counsel appearing for the State Government, the petitioner has no locus standi to file this public interest litigation as it is a settled law that no writ in the form of public interest litigation will lie under Article 226 in the service matters.

19. Though Mr.R.Viduthalai, the learned senior counsel for the petitioners would refer to paragraph 5 of the decision in 2003(6) S.C.C.581 (supra), which states that the High Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situation having no parallel under Article 226 of the Constitution, it is held by the Supreme Court in the same decision that the said extraordinary power is required to be sparingly used and only in extraordinary case. Therefore, the observation made by the Supreme Court in paragraph 5 in T.K.Rangarajan's case would not be of any use in the present case as such a situation has not arisen.

20. The petitioner has approached this Court only on being aggrieved that his leader's reputation has been damaged by making the statement in the plaint filed before the Supreme Court. As such, it has to be stated that this is not extraordinary case. and there is no extraordinary situation. Therefore, this Court cannot exercise its extraordinary jurisdiction.

21. Mr.R.Viduthalai, the learned senior counsel, on the strength of the decision in 2003(7) S.C.C.546 (supra), would point out the principles evolved by the Supreme Court by the guidelines 2 and 8 in the said decision that in the case of issues of public importance, enforcement of fundamental rights and even in the case where the private interest is involved in furtherance of the public interest, the court can entertain the writ petition in the form of public interest litigation.

22. This argument is to be rejected in toto in view of the fact that even in the said decision, it has been clearly held by the Supreme Court in items ii and viii of paragraph 50 that only

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

when there is issues of public importance, enforcement of fundamental rights of a large number of the public vis-a-vis the constitutional duties and functions of the State, if raised, and only when the Court feels that in furtherance of the public interest is involved, the Court may enquire into the state of affairs of the litigation in the interest of justice.

23. Admittedly, there is no public interest; there is no enforcement of fundamental rights of a large number of people; there is no question about the constitutional duties and functions of the State and equally, there is no public interest involved in this case.

24. As pointed out by Mr.P.P.Rao, the learned senior counsel, in 2000(9) S.C.C.313 (supra), the clear answer has been given by the Supreme Court to the issue raised in this case. It is specifically held that in a disciplinary proceeding, no public interest of general importance is involved. Further, no public interest litigation is to be allowed to be entertained in service matters, since it is essentially, a matter between the employer and the employee. In such a disciplinary proceeding, a stranger cannot be said to have any interest. Therefore, the public interest litigation in service matters has to be thrown out even at the threshold as not maintainable. The relevant observation of the Supreme Court is as follows:

> "But a mere busybody who has no interest cannot invoke the jurisdiction of the court. In respect of departmental proceedings which are initiated or sought to be initiated by the Government against its employees, a person who is not even remotely connected with those proceedings cannot challenge any aspect of the departmental proceedings or action by filing a writ petition in the High Court or in this Court. Disciplinary action against an employee is taken by the Government for various reasons principally for "misconduct" on the part of the employee. This action is taken after a "domestic" enquiry in which the employee is provided an opportunity of hearing as required by the constitutional mandate. It is essentially a matter between the employer and the employee, and a stranger, much less a practising advocate, cannot be said to have any interest in those proceedings. Public interest of general importance is not involved in disciplinary proceedings. In fact, if such petitions are entertained at the instance of persons who are not connected with those proceedings, it would amount to an abuse of process of court."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

25. The above observation would clearly enable this Court to come to the conclusion that the petitioner who is the Treasurer of a political party, who is not even remotely connected with the disciplinary action sought to be taken against the fifth respondent by the State Government, cannot be allowed to interfere in the internal matters regarding disciplinary action to be taken by the employer against the employee.

26. The similar observation made by the Supreme Court in 2004(3) S.C.C.349 (ASHOK KUMAR PANDEY v. STATE OF W.B.) is this:

> "As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra (A.I.R.1999 S.C.114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision."

This has been reiterated in the decision in 2004(3) S.C.C.363 (B.SINGH(DR) v. UNION OF INDIA).

27. In view of the above observations of the Supreme Court in various decisions cited supra, disciplinary action against an employee can be taken by the Government for various reasons principally for "misconduct" on the part of the employee. This action is taken after a "domestic" enquiry in which the employee is provided an opportunity of hearing as required by the constitutional mandate. Thus, it is clear that it is a purely a matter between the State Government, the employer and the fifth respondent, the employee.

28. The act of the petitioner in approaching this Court without approaching the State Government which is competent to take disciplinary proceedings against the fifth respondent and without moving to Supreme Court where the matter is pending, cannot be said to be fair. As laid down by the Supreme Court,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the public interest of general importance is not at all involved in the proposed disciplinary proceedings. In our view, the petitioner is not at all even remotely connected with the said proceedings and as such, we are to conclude that the action of the petitioner in approaching this Court would certainly amount to abuse of process of court.

29. This Court sincerely feels that the writ petition ought not to have been entertained at all. Now, the petition has been entertained, the respondents engaged their counsel and the counsel for the petitioner and the respondents were heard at length. By that, this Court feels that the Court's time has been wasted.

30. With the above observations, the writ petition is dismissed. Consequently, W.P.M.P.No.39320 of 2004 is also dismissed.

mam

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copy to:

1. The Secretary to Govt.,
   Union of India,
   Ministry of Home Affairs,
   Government of India,
   North Block,
   New Delhi.

2. Secretary to Government,
   Ministry of Personnel Affairs,
   Administrative Reforms and
   Public Grievances,
   Government of India,
   New Delhi.

3. The Chief Secretary to Govt.,
   State of Tamil Nadu,
   Fort St. George,
   Chennai-600 009.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. The Secretary to Govt.,
   State of Tamil Nadu,
   Public Department,
   Fort St. George,
   Chennai-600 009.

5. Ms. Lakshmi Pranesh,
   Chief Secretary to Government
   of Tamil Nadu
   Fort St George, Chennai 9.

+ 1 cc to Mr.A.V.Bharathi, Advocate SR 20250

+ 1 cc to Government Pleader SR 20227

GM(CO)
SR/29.4.2005

Order
in
W.P.No.32457 of 2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/